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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,750	12/08/2000	L. Michael Maritzen	80398.P400	4798

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EXAMINER


KRAMER, JAMES A

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/733,750	Applicant(s) MARITZEN, L. MICHAEL 	
	Examiner James A. Kramer	Art Unit 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7-13, 15-18, 20-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Sharp et al.

Sharp et al. teaches a web sales conflict resolution system. A customer access an e-commerce website hosted on a computer server which allows the customer to select among a large assortment of products from different manufacturers (column 3; lines 6-11). Examiner notes that e-commerce website corresponds to Applicant's third party.

Sharp et al. further teaches a computer program on the server that allocates the customer's order to a supplier of the product according to a distribution channel conflict resolution scheme specified by the manufacturer (column 3; lines 21-25). An order can be allocated to the owner of the website (primary merchant capable of supplying the goods associated with the transaction) or to a distributor selected according to the protocol or to the distributor for direct distribution. The term distributor is used to include distributors of a product at all levels in the distribution chain including retailers (column 3; lines 26-31).

Sharp et al. further teaches that if the order is allocated to either a distributor or to the manufacturer, the order is transmitted via a secure extranet communication link established over the computer network (column 3; lines 32-36).

Art Unit: 3627

Examiner now references Figure 4 and column 5; lines 18-55 for a description of the order allocation process. Sharp et al. teaches the system first determines who receives the order based on a distribution channel conflict resolution scheme. However, after this scheme the system then checks the inventory of the distributor and if the distributor cannot fulfill the order then a secondary or ancillary distributor is selected.

Examiner notes that the system of Sharp et al. does include an additional step not part of Applicant's invention, however Applicant's use of the non-limiting transitional phrase "comprising" in the preamble allows for additional steps. The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. See, e.g., *Genentech, Inc. v. Chiron Corp.*, 112 F.3d 495, 501, 42 USPQ2d 1608, 1613 (Fed. Cir. 1997) ("Comprising" is a term of art used in claim language which means that the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.); *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); *In re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948) ("comprising" leaves "the claim open for the inclusion of unspecified ingredients even in major amounts").

Sharp et al. further teaches order confirmation information, including order number and a link to an order/shipping information web page, is e-mailed to the customer (for example column 4; lines 9-11). Examiner notes this corresponds to Applicant's delivering an electronic receipt communication purchasing activity to the customer (claims 3, 11 and 17).

Art Unit: 3627

Sharp et al. also teaches a user logging on to the system and the system confirming the order including name, address and credit information. Examiner notes this corresponds to bio-information.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 14, and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp et al. in view of Bezos.

Sharp et al. does not teach a referral fee paid by the distributor to the e-commerce web site. As stated by Applicant on page 8 of paper 18, Bezos teaches a computerized referral system in which associates recommend products from selected vendors to consumers and receive compensation from the merchants when the consumers complete a purchase based on the recommendation. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Sharp et al. so that the distributor who completes the order pays a referral fee to the e-commerce web site (i.e. associate) in order to help support the costs of the e-commerce web site.

***Response to Arguments***

Applicant's arguments filed 7/9/04 have been fully considered but they are not persuasive. Applicant asserts that Sharp does not teach or suggest using a TPOCH that maintains customer privacy. Examiner respectfully disagrees and asserts that Sharp's website performs all the functions required of Applicant's TPOCH.

Examiner first makes note that Applicant's limitation of "maintains customer privacy" must be defined. Examiner defines this as the TPOCH does not share customer payment information. However, by virtue of Applicant's teachings and claims, the consumer's name and shipping information must be shared. Examiner relies on claim 4 "arranging for delivery of the purchased item directly from the ancillary merchant to the consumer" for support. Specifically, the Applicant's TPOCH must give name and shipping address in order to arrange for direct delivery from the ancillary merchant.

Further Examiner notes that Applicant defines the functions of the TPOCH on page 11 of the Specification. According to Applicant the TPOCH, "maintains a secure database of transaction device information and user information", "interfaces to at least one financial processing system to perform associated financial transactions", "provides information through a distribution system that can provide purchased product to the user" and the "presence of the TPOCH means that no details of the transaction, other than amount of the transaction and other basic information, are known to the FP". Examiner further notes that Applicant's TPOCH arranges for the delivery of purchased item directly from the ancillary merchant. In order to accomplish this, the consumer's shipping information must be made available to the ancillary merchant.

Examiner points to Sharp column 3; line 60 – column 4; line 10. The system teaches a user logging-in to a system, entering an order. Credit card or other payment information is

Art Unit: 3627

verified and processed and the customer information is stored in a database. In addition, Examiner notes that the only information presented to the supplier is shipping information, in order to allow the ancillary merchant to directly deliver the product to the customer. As a result of these teaching Examiner concludes that Sharp does in fact teach a TPCCH as defined by Applicant.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

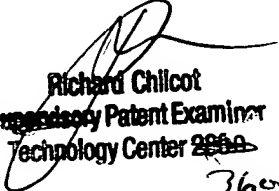
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (703) 305-5241. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (703) 305-4716. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James A. Kramer  
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3627